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7
8 **BEFORE THE**
DIRECTOR OF THE OFFICE OF REAL ESTATE APPRAISERS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. C110120-01; C110124-01

11 **ERIC A. FROHLICH**
12 **1158 26th Street, #579**
13 **Santa Monica, CA 90403**

A C C U S A T I O N

14 **Real Estate Appraiser License No.**
15 **AG028756**

Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Elizabeth Seaters, acting on behalf of the Office of Real Estate Appraisers
20 (Complainant), brings this Accusation solely in her official capacity as the Chief of Enforcement
21 of the Complainant.

22 2. On or about February 27, 2002, the Director of the Office of Real Estate Appraisers
23 issued Real Estate Appraiser License Number AG028756 to Eric A. Frohlich (Respondent). The
24 Real Estate Appraiser License was in full force and effect at all times relevant to the charges
25 brought herein and will expire on August 4, 2012, unless renewed.

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1 as promulgated by the Appraisal Standards Board of The Appraisal Foundation which standards
2 are herein incorporated into these regulations by reference as if fully set forth herein."

3 9. California Code of Regulations, title 10, section 3702, states in pertinent part:

4 "(a) The Director finds and declares as follows:

5 (1) That the profession of real estate appraisal is vested with a fiduciary relationship of trust
6 and confidence as to clients, lending institutions, and both public and private guarantors or
7 insurers of funds in federally-related real estate transactions and that the qualifications of honesty,
8 candor, integrity, and trustworthiness are directly and substantially related to and indispensable to
9 the practice of the appraisal profession;

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11 "(3) Every holder of a license to practice real estate appraisal, Registrant, Controlling
12 Person of an Appraisal Management Company, or person or entity acting in a capacity requiring a
13 license or Certificate of Registration shall be required to demonstrate by his or her conduct that he
14 or she possesses the qualifications of honesty, candor, integrity, and trustworthiness."

15 10. Title 10, California Code of Regulations, section 3705, states:

16 "(a) Every appraisal report subject to the Uniform Standards of Professional Appraisal
17 Practice upon final completion shall bear the signature and license number of the appraiser and of
18 the supervising appraiser, if appropriate. The affixing of such signature and number constitute the
19 acceptance by the appraiser and supervising appraiser of full and personal responsibility for the
20 accuracy, content, and integrity of the appraisal under Standards Rules 1 and 2 of USPAP.

21 "(b) Every review appraisal report upon final completion shall bear the signature and
22 license number of the reviewer. The affixing of such signature and number shall constitute
23 acceptance by the reviewer of responsibility for the review under Standard Rule 3 of USPAP.

24 "(c) The license number of the appraiser, and of the review appraiser if the report is a
25 review, shall appear with each signature throughout the appraisal or review document."

26 11. California Code of Regulations, title 10, section 3721 states, in pertinent part:

27 "(a) The Director may issue a citation, order of abatement, assess a fine or private or public
28 reproval, suspend or revoke any license or Certificate of Registration, and/or may deny the

1 issuance or renewal of a license or Certificate of Registration of any person or entity acting in a
2 capacity requiring a license or Certificate of Registration who has:

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4 "(6) Violated any provision of USPAP;

5 "(7) Violated any provision of the Real Estate Appraisers' Licensing and Certification Law,
6 Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code, or
7 regulations promulgated pursuant thereto; or any provision of the Business and Professions Code
8 applicable to applicants for or holders of licenses authorizing appraisals;

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10 **2006 UNIFORM STANDARDS OF**
11 **PROFESSIONAL APPRAISAL PRACTICE (USPAP)**

12 12. USPAP Standards Rule 1-1 states:

13 In developing a real property appraisal, an appraiser must:

14 (a) be aware of, understand, and correctly employ those recognized methods and
15 techniques that are necessary to produce a credible appraisal;

16 (b) not commit a substantial error of omission or commission that significantly affects an
17 appraisal; and"

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19 13. USPAP Standards Rule 1-2 states:

20 In developing a real property appraisal, an appraiser must:

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22 (e) identify the characteristics of the property that are relevant to the type and definition of
23 value and intended use of the appraisal, including:

24 (i) its location and physical, legal, and economic attributes;

25 (ii) the real property interest to be valued;

26 (iii) any personal property, trade fixtures, or intangible items that are not real property but
27 are included in the appraisal;

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1 (iv) any known easements, restrictions, encumbrances, leases, reservations, covenants,
2 contracts, declarations, special assessments, ordinances, or other items of similar nature; and

3 (v) whether the subject property is a fractional interest, physical segment, or partial
4 holding;

5 (f) identify any extraordinary assumptions necessary in the assignment;

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7 (h) determine the scope of work necessary to produce credible assignment results in
8 accordance with the SCOPE OF WORK RULE.

9 14. USPAP Standards Rule 1-3 states:

10 When necessary for credible assignment results in developing a market value opinion, an
11 appraiser must:

12 (a) identify and analyze the effect on use and value of existing land use regulations,
13 reasonably probable modifications of such land use regulations, economic supply and demand,
14 the physical adaptability of the real estate, and market area trends; and

15 (b) develop an opinion of the highest and best use of the real estate.

16 15. USPAP Standard Rule 1-4 states:

17 In developing a real property appraisal, an appraiser must collect, verify, and analyze all
18 information necessary for credible assignment results.

19 (a) When a sales comparison approach is necessary for credible assignment results, an
20 appraiser must analyze such comparable sales data as are available to indicate a value conclusion.

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22 (f) When analyzing anticipated public or private improvements, located on or off the site,
23 an appraiser must analyze the effect on value, if any, of such anticipated improvements to the
24 extent they are reflected in market actions.

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1 16. USPAP Standards Rule 2-2 states:

2 Each written real property appraisal report must be prepared under one of the following
3 three options and prominently state which option is used: Self-Contained Appraisal Report,
4 Summary Appraisal Report, or Restricted Use Appraisal Report.

5
6 (b) The content of a Summary Appraisal Report must be consistent with the intended use
7 of the appraisal, and, at a minimum;

8
9 (iii) summarize information sufficient to identify the real estate involved in the appraisal,
10 including the physical and economic property characteristics relevant to the assignment;

11
12 (vi) state the effective date of the appraisal and the date of the report;

13 (vii) summarize the scope of work used to develop the appraisal;

14 (viii) summarize the information analyzed, the appraisal methods and techniques employed,
15 and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales
16 comparison approach, cost approach, or income approach must be explained;

17 (ix) state the use of the real estate existing as of the date of value and the use of the real
18 estate reflected in the appraisal; and, when an opinion of highest and best use was developed by
19 the appraiser, summarize the support and rationale for that opinion;

20 (x) clearly and conspicuously:

21 state all extraordinary assumptions and hypothetical conditions; and

22 state that their use might have affected the assignment results; and

23
24 17. USPAP Standards Rule 2-3 states:

25 Each written real property appraisal report must contain a signed certification that is similar
26 in content to the following form:

27 I certify that, to the best of my knowledge and belief:

28 — the statements of fact contained in this report are true and correct.

1 — the reported analyses, opinions, and conclusions are limited only by the reported
2 assumptions and limiting conditions and are my personal, impartial, and unbiased professional
3 analyses, opinions, and conclusions.

4 — I have no (or the specified) present or prospective interest in the property that is
5 the subject of this report and no (or the specified) personal interest with respect to the parties
6 involved.

7 — I have no bias with respect to the property that is the subject of this report or to the
8 parties involved with this assignment.

9 — my engagement in this assignment was not contingent upon developing or
10 reporting predetermined results.

11 — my compensation for completing this assignment is not contingent upon the
12 development or reporting of a predetermined value or direction in value that favors the cause of
13 the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence
14 of a subsequent event directly related to the intended use of this appraisal.

15 — my analyses, opinions, and conclusions were developed, and this report has been
16 prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.

17 — I have (or have not) made a personal inspection of the property that is the subject
18 of this report. (If more than one person signs this certification, the certification must clearly
19 specify which individuals did and which individuals did not make a personal inspection of the
20 appraised property.)

21 — no one provided significant real property appraisal assistance to the person signing
22 this certification. (If there are exceptions, the name of each individual providing significant real
23 property appraisal assistance must be stated.)

24 18. The USPAP Ethics Rule states:

25 To promote and preserve the public trust inherent in professional appraisal practice, an
26 appraiser must observe the highest standards of professional ethics. This ETHICS RULE is
27 divided into four sections: Conduct, Management, Confidentiality, and Record Keeping. The first

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three sections apply to all appraisal practice, and all four sections apply to appraisal practice performed under Standards 1 through 10.

Compliance with these standards is required when either the service or the appraiser is obligated by law or regulation, or by agreement with the client or intended users, to comply. In addition to these requirements, an individual should comply any time that individual represents that he or she is performing the service as an appraiser.

An appraiser must not misrepresent his or her role when providing valuation services that are outside of appraisal practice.

Conduct:

An appraiser must perform assignments ethically and competently, in accordance with USPAP and any supplemental standards agreed to by the appraiser in accepting the assignment. An appraiser must not engage in criminal conduct. An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.

In appraisal practice, an appraiser must not perform as an advocate for any party or issue.

An appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions.

An appraiser must not communicate results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report.

An appraiser must not use or rely on unsupported conclusions relating to characteristics such as race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value.

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Record Keeping:

An appraiser must prepare a workfile for each appraisal, appraisal review, or appraisal consulting assignment. The workfile must include the name of the client and the identity, by name or type, of any other intended users; true copies of any written reports, documented on any

1 type of media; summaries of any oral reports or testimony, or a transcript of testimony, including
2 the appraiser's signed and dated certification; and all other data, information, and documentation
3 necessary to support the appraiser's opinions and conclusions and to show compliance with this
4 Rule and all other applicable Standards, or references to the location(s) of such other
5 documentation.

6 An appraiser must retain the workfile for a period of at least (5) years after preparation or at
7 least two (2) years after final disposition of any judicial proceeding in which testimony was
8 given, whichever period expires last, and have custody of his or her workfile, or make appropriate
9 workfile retention, access, and retrieval arrangements with the party having custody of the
10 workfile.

11 **COST RECOVERY AND FINES**

12 19. Business and Professions Code section 11409, subdivision (a) states:

13 "Except as otherwise provided by law, any order issued in resolution of a disciplinary
14 proceeding may direct a licensee, applicant for licensure, person who acts in a capacity that
15 requires a license under this part, registrant, applicant for a certificate of registration, course
16 provider, applicant for course provider accreditation, or a person who, or entity that, acts in a
17 capacity that requires course provider accreditation found to have committed a violation or
18 violations of statutes or regulations relating to real estate appraiser practice to pay a sum not to
19 exceed the reasonable costs of investigation, enforcement, and prosecution of the case."

20 20. Business and Professions Code section 11316, subdivision (a) states:

21 "(a) The director may assess a fine against a licensee, applicant for licensure, person who
22 acts in a capacity that requires a license under this part, course provider, applicant for course
23 provider accreditation, or a person who, or entity that, acts in a capacity that requires course
24 provider accreditation for violation of this part or any regulations adopted to carry out its
25 purposes."

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1 FIRST CAUSE FOR DISCIPLINE

2 (Misleading and Inaccurate Appraisal Report- Unimproved

3 Lots 29 and 31 in Mountain Oaks, Glendale CA)

4 21. Respondent is subject to disciplinary action under Business and Professions Code
5 section 11319, in conjunction with California Code of Regulations, title 10, sections 3701, 3705
6 and 3721, subdivisions (a)(6) and (a)(7), in that on or about October 5, 2006, Respondent
7 completed a real estate appraisal report, with an effective date of October 5, 2006, for two
8 unimproved lots (Lots 29 and 31) located in the Mountain Oaks area of Glendale, California,
9 which contained errors or omissions, in violation of the provisions of the Uniform Standards of
10 Professional Appraisal Practice (USPAP) as follows:

11 (a) Respondent failed to accurately report and analyze the characteristics of the subject
12 Mountain Oaks neighborhood, which is a designated open space with a rural park-like setting and
13 hiking trails. Respondent erroneously described the neighborhood as a conforming and desirable
14 residential area having condominiums, multiple family residences, and only twenty-five (25)
15 percent vacant land. Respondent incorrectly reported that supporting services, such as public
16 transportation were "good". Respondent also incorrectly described the neighborhood boundaries,
17 identifying Kanan Dune Road as the eastern border even though Kanan Dune Road is
18 approximately forty-one miles west of the neighborhood's border. (USPAP, S.R. 1-1(a), 1-1(b),
19 1-2(e)(i), 1-3(a), 2-2(b)(iii));

20 (b) Respondent failed to accurately report and analyze the characteristics of the subject
21 Mountain Oaks real estate market. There is virtually no market activity, yet Respondent
22 incorrectly reported growth as steady, values as stable, demand and supply in as in balance, and
23 marketing time as 4-6 months. Respondent incorrectly reported that single family homes ranged
24 in age from 1 to 82 years even though no building permits have been issued for new construction
25 in the area since it was annexed by the City of Glendale in the 1950s. Respondent failed to
26 support the reported price range of between \$320,000 and \$1,475,000 for single family homes in
27 the neighborhood. (USPAP, S.R. 1-1(a), 1-1(b), 1-2(e)(i), 1-3(a), 2-2(b)(iii));

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1 (c) Respondent failed to report and analyze characteristics of the subject property that
2 strongly affected value. Respondent incorrectly made the appraisal “as is” and failed to mention
3 that the purported lots being appraised were based on alleged blue prints or plans. Many
4 characteristics assumed to be factual by Respondent were contrary to what existed. Factors
5 affecting the possibility of the subject property being properly subdivided, including slope,
6 topography, proximity to water and sewer lines, and the possibility of necessary zoning changes,
7 were not correctly reported or researched. (USPAP, S.R. 1-1(a), 1-1(b), 1-2(e)(i), 2-2(b)(iii), 2-
8 2(b)(vii));

9 (d) Respondent made inappropriate and unreasonable extraordinary assumptions
10 correlating to the “as is” appraisal. Respondent knew the listed extraordinary assumptions were
11 contrary to what existed at the time of the appraisal and had no reasonable basis upon which to
12 make those extraordinary assumptions. Respondent failed to report that the extraordinary
13 assumptions described might have affected the assignment results. Respondent failed to exercise
14 the necessary diligence of performing sufficient research to determine the viability of
15 extraordinary assumptions. (USPAP, S.R. 1-1(a), 1-1(b), 1-2(f), 1-4(f) and 2-2(b)(x));

16 (e) Respondent failed to correctly identify the appraisal problem for the assignment.
17 Respondent failed to determine the scope of work necessary to prepare a credible report. The
18 scope of work performed in Respondent’s appraisal assignment was inadequate. The
19 inappropriate and inadequate scope of work resulted in a misleading report that was not credible.
20 (S.R. 1-1(a), 1-1(b), 1-2(h), 2-2(b)(vii), 2-3, and Scope of Work Rule);

21 (f) Respondent incorrectly identified the zoning for the subject property as “R1”, Low
22 Density Residential, when the actual zoning is “ROS III”, reserve open space. The subject
23 property has never been zoned R1 and is very unlikely to ever be zoned as such. Respondent
24 incorrectly reported that the lots conformed to the current R1 zoning and represented a legal use.
25 The City of Glendale has not issued new construction permits in the Mountain Oaks area since it
26 annexed the area in the 1950s. (USPAP, S.R. 1-1(a), 1-1(b), 1-3(a) and 2-2(b)(ix));

27 (g) Respondent incorrectly reported that the subject property was zoned R1 and that the
28 development of a single family residential use was the highest and best use. Respondent failed to

1 consider that the subject property would fail the first two tests of highest and best use in that it
2 was not physically possible or legally permissible to develop for single family residential use.
3 (USPAP, S.R. 1-1(a), 1-1(b), 1-3(b) and 2-2(b)(ix));

4 (h) Respondent failed to correctly perform the Sales Comparison Approach. Respondent
5 failed to select and analyze comparables similar to the subject property. All comparables
6 considered in Respondent's analysis were conforming level lots in developed areas. All
7 comparables had streets, curbs, gutters, utilities and water. Site utility was not analyzed, which is
8 significant because the subject property is a sloping site while the comparables were
9 predominantly level. Comparable 1 had a cottage and garage constructed on the site, while
10 Comparables 2 and 3 were sold on the same day with identical buyers, sellers and sale prices.
11 The sole basis for the value opinion was Respondent's flawed Sales Comparison Approach,
12 which resulted in a significant overvaluation. (USPAP, S.R. 1-1(a), 1-1(b), 1-4(a) and 2-
13 2(b)(viii));

14 (i) Based on the violations described in paragraphs (a) through (h), above, Respondent
15 prepared a misleading report that was not credible. (USPAP, S.R. 2-1(a), 2-1(b) and Conduct
16 Section of the Ethics Rule).

17 **SECOND CAUSE FOR DISCIPLINE**

18 (Failure to Maintain and Provide Work File for Appraisal of

19 Unimproved Lots 39, 40 and 41 in Mountain Oaks, Glendale CA)

20 22. Respondent is subject to disciplinary action under Business and Professions Code
21 section 11319, in conjunction with California Code of Regulations, title 10, sections 3701 and
22 3721, subdivisions (a)(6) and (a)(7) in that Respondent violated the Record Keeping section of
23 the USPAP Ethics Rule by failing to maintain a work file for at least five (5) years. The
24 circumstances are that in that in or around October 2006, Respondent prepared a real estate
25 appraisal report for three unimproved lots (Lots 39, 40 and 41) located in the Mountain Oaks area
26 of Glendale, California. On or around January 24, 2011, complainant OREA received a
27 consumer complaint alleging that this appraisal report was misleading and inaccurate in the same
28 manner as the appraisal report discussed above in paragraph 21. On or about February 1, 2011,

1 OREA sent correspondence to Respondent in which it requested that an exact copy of the
2 appraisal report be provided to OREA along with Respondent's entire work file related to the
3 assignment. Respondent failed to provide OREA with a copy of the appraisal or any portion of
4 the work file, claiming that he was not in possession of any such documents because all of his
5 work files had been seized by a storage facility. To date, Respondent has not provided OREA
6 with a copy of the appraisal or any portion of the subject work file.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Director of the Office of Real Estate Appraisers issue a
10 decision:

- 11 1. Revoking or suspending Real Estate Appraiser License Number AG028756, issued to
12 Eric A. Frohlich;
- 13 2. Ordering Eric Frohlich to pay the Director of the Office of Real Estate Appraisers the
14 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
15 Professions Code section 11409;
- 16 3. Ordering Eric Frohlich to pay the Director of the Office of Real Estate Appraisers a
17 fine pursuant to Business and Professions Code section 11316; and
- 18 4. Taking such other and further action as deemed necessary and proper.

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21 DATED: 6/6/12

Original Signed

22 ELIZABETH SEATERS
23 Chief of Enforcement
24 Office of Real Estate Appraisers
25 State of California
26 *Complainant*

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